APPEAL NO. 93304

On March 11, 1993, a contested case hearing was held in (city), Texas, with the hearing record being closed on March 30, 1993. (hearing officer) presided as the hearing officer. The hearing officer determined that the appellant (claimant herein) did not sustain an occupational disease (repetitive trauma injury) on (date of injury), and further determined that the respondent (carrier herein) is not responsible for payment of benefits to the claimant as a result of her alleged injury under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-1.01 *et seq*. (Vernon Supp. 1993) (1989 Act). The claimant contends that the hearing officer erred in making certain findings of fact and a conclusion of law. The carrier responds that there is sufficient evidence to support the hearing officer's decision.

DECISION

The decision of the hearing officer is affirmed.

The issue to be determined at the hearing was whether the claimant sustained an occupational disease in the course and scope of her employment with her employer, on (date of injury). The claimant alleged that she sustained bilateral carpal tunnel syndrome while working for her employer, that she suspected that her condition was work related in June 1991, and that she knew that her condition was work related on (date of injury). Notice of injury was not an issue at the hearing.

The claimant began working for the employer, an insurance company, in 1974. She worked in the accounting department, the audit department, and for the last six years of her employment, in the legal department doing collection work. She was laid off in April 1991 when the division she worked in was closed. Since being laid off, she has not worked. She collected unemployment benefits for a year.

The claimant testified that she started having problems with her right hand in 1979, and her left hand in 1988. She said she worked with pain, but did not miss any work due to her hand problems. She said she thought she had arthritis. The claimant said that for the last six years of her employment she wrote letters and reports by hand and then typed them on a personal computer. She also did some filing and used a calculator intermittently. She said she used bandaids on her fingers and "rubber deals" on pencils to cushion "it." When asked what she did at work on a daily basis, the claimant said "[w]ell, basically just talked on the telephone to the customers quite a bit." When she was again asked what she did at work, the claimant said "[u]sually I typed some little something daily, but not a whole lot, maybe a letter or something like that." The claimant also said "I didn't have to really work that hard the last year I was there."

The claimant said that she first saw (Dr. S), an HMO doctor, a week before she saw (Dr. A). She said that Dr. S "couldn't tell me anything" and that he referred her to Dr. A

whom she first saw on (date of injury). She further testified that Dr. A referred her to (Dr. K) for tests and that Dr. A has continued to treat her. She said that Dr. A told her that her carpal tunnel syndrome was related to what she had been doing at work. Dr. A performed a right carpal tunnel release on the claimant in February 1993.

Several documents were in evidence. In a "To Whom It May Concern" letter of (date of injury), Dr. A wrote "I saw [the claimant] in my office today and she was diagnosed with bilateral carpal tunnel syndrome." Nothing is stated as to the cause of that condition. In a report dated (date of injury), Dr. A stated that the claimant had complaints of pain and numbness in both hands over the "past several weeks" and that she "works in an office and she has not been able to do that because of the gradual numbness and condition getting worse." As previously indicated, the claimant had not worked since April 1991, and she testified that she did not miss any work because of her hand problems. She also said that she stopped working because the employer "closed the doors." In October and December 1992 health insurance claim forms Dr. A indicated that the claimant's condition was not related to her employment. Dr. K also indicated that the claimant's condition was not related to her employment in a November 1992 health insurance claim form.

In an electromyogram report dated October 27, 1992, Dr. K set forth his findings and stated:

> These findings are consistent with a clinical diagnosis of an extremely severe bilateral carpal tunnel syndrome and median neuropathy. Since the median nerves are most significantly affected, I suspect the neuropathy is as a result of prolonged carpal tunnel syndrome but one cannot rule out the possibility of a primary mononeuropathy multiplex as well.

The hearing officer kept the record open in order to allow the claimant to submit additional medical reports. The claimant obtained a letter from Dr. A dated March 12, 1993, in which Dr. A stated:

> [The claimant] has been (sic) for Bilateral Carpal Tunnel Syndrome. Due to typing and her type of work, I feel that her condition is work related.

The hearing officer recognized that the claimant was claiming a repetitive trauma injury, which is an occupational disease, and is defined as "damage or harm to the physical structure of the body occurring as the result of repetitious, physically traumatic activities that occur over time and arise out of and in the course and scope of employment." Article 8308-1.03(39). The date of injury in the case of an occupational disease is the date on which the employee knew or should have known that the disease may be related to the employment. Article 8308-4.14. In discussing repetitive trauma injuries, the court in Davis v. Employers Insurance of Wausau, 694 S.W.2d 105 (Tex. Civ. App.-Houston [14th Dist.] 1985, writ ref'd

n.r.e.) stated:

To recover for an occupational disease of this type, one must not only prove that repetitious physical traumatic activities occurred on the job, but also prove that a causal link existed between these activities on the job and one's incapacity; that is, the disease must be inherent in that type of employment as compared with employment generally.

The claimant disputes the following findings of fact and conclusion of law:

FINDINGS OF FACT

No. 3.The claimant presented no evidence concerning the degree of force or the number of repetitive movements required by her job during a given period of time.

No. 4.The claimant did not prove that the level and frequency of repetitious activity was sufficient to cause her bilateral carpal tunnel syndrome.

No. 5.The claimant did not prove that she was exposed to an increased incidence of repetitious physically traumatic activities in her work.

No. 6.On October 28, 1992 and December 2, 1992, the claimant's treating doctor, Dr. A, submitted a health insurance claim form indicating that the claimant's condition was not related to her current of previous employment.

No. 7.On November 2, 1992, Dr. K submitted a health insurance claim form indicating that the claimant's condition was not related to her employment.

No. 8.The claimant did not injure her right or left wrist on (date of injury).

CONCLUSION OF LAW

No. 2.The claimant did not establish, by a preponderance of the evidence, that she sustained an occupational disease (repetitive trauma injury) on (date of injury).

It is the claimant's burden to establish that an injury was received in the course and scope of her employment. Spillers v. City of Houston, 777 S.W.2d 181, 186 (Tex. App.-Houston [1st Dist.] 1989, writ denied). The hearing officer is the trier of fact in a contested case hearing and is the sole judge of the weight and credibility to be given the evidence.

Articles 8308-6.34(e) and (g). It has been stated that the trier of fact is not required to accept a claimant's testimony at face value, even where it is not specifically contradicted by other evidence. Bullard v. Universal Underwriters' Insurance Co., 609 S.W.2d 621 (Tex. Civ. App.-Amarillo 1980, no writ). The hearing officer resolves conflicts and inconsistencies in the testimony and in expert medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The opinion evidence of expert medical witnesses is but evidentiary, and is not binding on the trier of fact. Houston General Insurance Company v. Pegues, 514 S.W.2d 492 (Tex. Civ. App.-Texarkana 1974, writ ref'd n.r.e.). Having reviewed the record, we conclude that the hearing officer's findings, conclusion, and decision are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

In affirming the hearing officer's decision we wish to make clear our disagreement with Finding of Fact No. 3 to the extent that that finding implies that a claimant in a carpal tunnel syndrome case must present evidence concerning the degree of force and the specific number of repetitive movements required in her work to prevail. What is required is proof of damage or harm to the physical structure of the body occurring as the result of repetitious, physically traumatic activities that occur over time and arise out of and in the course and scope of employment. Article 8308-1.03(39), Davis, *supra*. However, in a particular case it may be beneficial for a claimant to present evidence of the type described in Finding of Fact No. 3 to help show the nature and extent of the repetitive work activities and the connection between the activities and the injury. *See, for example*, Texas Workers' Compensation Commission Appeal No. 92047, decided March 25, 1992. In that case, the employee presented evidence that she crimped 1,000 wires per day. Although we disagree with Finding of Fact No. 3 to the extent indicated, we cannot conclude that what is implied in that finding warrants reversal under the evidence presented in this case, because the hearing officer's other findings support his conclusion that the claimant did not sustain a repetitive trauma injury in the course and scope of her employment. The claimant claims a carpal tunnel injury from repetitive, physically traumatic activities at work, but her testimony concerning her work indicated that she talked on the phone "quite a bit" and that her daily work activity, besides talking on the phone and doing some filing, consisted of typing "some little something daily, but not a whole lot, maybe a letter or something like that." In addition, the medical evidence was conflicting with Dr. A at one point indicating that the claimant's condition was not related to her employment, but later indicating that it was. After weighing the evidence and `resolving the conflicts in the evidence, the hearing officer determined that the evidence did not support the claimant's claim. We cannot conclude that that determination is against the great weight and preponderance of the evidence.

The decision of the hearing officer is affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Thomas A. Knapp
Appeals Judge